Supreme Court, U.S.
FILED

06112 0 APR 10 2006

OFFICE OF THE CLERK

CASE NO. _____

In The

Supreme Court of the United States

Bartlett- Jay Hanford, Petitioner

v.

Mine Safety and Health Administration,

Respondent(s)

On Petition For Writ of Certiorari

United States Court of Appeal for the

Federal Circuit

Washington D. C. 20439

PETITION FOR WRIT OF CERTIORARI

Bartlett-Jay: Hanford
P.O. Box 918
San Andreas, California 95249
(209) 754-1752

RECEIVED

MAY 10 2006

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1a. Government actions are always all ways considered valid unless timely challenged. Upon timely service upon the Secretary of Labor, Undersecretaries and field agents of the Mine Safety and Health Administration (MSHA) of an issue of law involving two Constitutional Conclusions of Law, Affidavit, Memorandum of Law and Bill of Particulars was a judicial court process, a legal determination rather than their conclusion of law necessary for delegated power of said agency to be validly exercised against petitioner. Was the appearance at the magazine site by MSHA without authority for failing to resolve two constitutional conclusions of law, acting solely upon MSHA's conclusion of law, a violation of the separation of powers because MSHA was precluded from the exercise of judicial power.

1b. Was a conclusion of law presented by petitioner and the conclusion of law set by the non-response of the Mine Safety and Health Administration, two conclusions of law that

needed to be resolved by an a valid judicial court process for the above said agency to have authority to move against petitioner.

1c. Upon learning of a planned invasion of Petitioner's Property by the MSHA from the Sheriff was a Bill of Particulars a valid process the petitioner could use as binding obligation upon MSHA for petitioner to learn the NATURE and CAUSE of their participation in an organized enterprise with the Sheriff, making the routine explosive permit contingent upon allowing MSHA to inspect the mine in an act of extortion. Could that obligation upon said agency be un-answerable without violating petitioners due process rights and Petitioner's right to petition under the 1st Amendment of the United States Constitution.

1d. Since the Alcohol Tobacco and Fire Arms Agency (ATF), which MSHA claimed to have authority by a memorandum of understanding with ATF declined to participate in the inspection of Petitioner's explosive magazine because petitioner was not a licensee or permittee of ATF,

but an INTRASTATE user of explosives. Should MSHA have waited for a more opportune time when said agency could obtain a valid court process either an injunction or a valid fourth amendment warrant signed by a judge of oath and affirmation to participate in a state search with a state employee. What was the effectuation of substantial Federal purpose for said agency to participate in an organized enterprise with the Sheriff to deny petitioner explosives to operate the mine.

2. Was the interference by the Mine Safety and Health Administration in a purely a State Matter without authority in an organized enterprise with the Sheriff, depriving petitioner the tool of his trade, explosives, a denial of the Right to Mine without due process of law?

3. Did the participation of the Mine Safety and Health Administration with a State Official on a purely State search require the Federal Mine Inspector to have a valid Fourth Amendment Warrant from a Federal Judge of Oath and Affirmation?

4. Did the deprivation of Petitioners fundamental liberties, the right to mine by the physical invasion of Mine Safety and Health Administration without authority or effectuation of a substantial federal purpose constitute a takings in violation of the fifth amendment of the united States Constitution?

5. Was the Writ of Precipe a valid instrument, a command from the sovereign, to cause the Writ of Mandate to be filed in the Court of Appeal for the Federal Circuit?

6. Can explosives be used as a ruse to violate Petitioner's fundamental liberties and right to mine?

LIST OF THE PARTIES

[x] All parties do appear in the caption of this case on the cover page.

TABLE OF CONTENTS

PAGE(S)

QUESTION'S PRESENTED:..... i – iv

LIST OF PARTIES:..... v

TABLE OF CONTENTS:..... vi

INDEX and APPENDICES:..... vii

TABLE OF AUTHORITIES:..... viii

STATUTES and RULES
OTHER:..... ix

OPINIONS BELOW:..... x-xviii

JURISDICTION:..... 1

CONSTITUTION and
STATUTORY PROVISONS INVOLVED. .2-5

STATEMENT OF CASE:..... 6-13

REASONS FOR
GRANTING PETITION:.....13-25

CONCLUSION:.....25-30

INDEX TO APPENDICES

		Page
Appendix:	Order from US Court Of Federal Claims (*dismissing case*)	1
	Order and Opinion	2 –24
	Plaintiff's timely application for rehearing to USCFC returned un-filed Plaintiff refused order made void on grounds of Fraud (*In appendix of opening Brief USAFC)*	25-27
	Order Plaintiff's Rejection and refusal of opinion and Order for fraud to be Returned un-filed USCFC.	28
	US Court of Appeals for Federal Circuit affirming USCFC.	29
	US Court of Appeals for Federal Circuit denying Rehearing	30
	Order US District Court For theDistrict of Columbia Dismissing Case for lack of jurisdiction	31
	Order US court of Appeals for the District of Columbia affirming out of time Notice of Appeal	32

TABLE OF AUTHORITIES

Cases

SD Mining Assoc. v Jack Cole,

nhttp:// laws. Find law. com /8th/973861p.html...14

U.S. v Etcherrey 230 F 2nd 193. 18

Mehols v Milwaukee 156 Wis 591 17

Marshall v Waite 628 F.2nd 1255 (1980) 4,20

Byers v US 273 US 313, 317 (1921) 4, 7,20

Pennsylvania Coal Co. v Mahon. 260 U.S. 414. 18

First English Evan v Los Angeles 482 U.S. at 318.

.....21

Mclovich Bidrs v City of San Bernardino, 160 CA, App

Ct 3rd 981.) 3

Loretto v. Teleprompter Manhattan CATV

Corp., 458 U.S. 419 21

Mattox v United States, 156 U.S. 237, ...24

Kirby v United States 174 U.S. 47; 24

Motes v United States, 178 U.S. 458, 474; 24

in re Oliver 333 U.S. 257, 273 24

Southern R. Co. v. Virginia, 290 U.S. 190;....24

Ohio Bell Telephone Co. v Public Utilities

Commission, 301 U.S. 292; 24

Morgan v United States, 304 U.S. 1, 19; 24

Carter v Kubler, 320 U.S. 243.....24

Reilly v Pinkus, 338 U.S. 269.....25

Green v McElroy, 360 U.S. 474, 496-497

(1959).....25

Yick Wo v Hopkins 118 U.S. 356, 370. 30

CONSTITUTIONAL, STATUTES AND REGULATORY PROVISIONS

Title 42 USC 1986 2,8,13

Title 30 USC 801 et seq.... .....

Title 18 USC 242 2,13

Title 5 USC 706 3

Title 4 USC 72 16

Cal Health and Safety Code 12,105.2 8

FRCP Rule 9(b) 16

43 CFR 3614.3.....16

UCC 3-501.....16

Constitution Federal

Article I; Legislative, Article II; Executive,

Article III, Judicial. 2,15,26

Bill of Rights 4

Article VI Section II.....14,26

Amendment 1st U.S. Constitution ...17

Amendment 4th U.S. Constitution ...17,20

Amendment 5th U.S. Constitution ... 17,21

Amendment 4th U.S. Constitution 17

Amendment 14th U.S Constitution ...17

Constitution California

Article III section III 2

Other

Supreme Court Rule 22.....11

Praecipe 22

The Federalist no. 78.....26

CASE NO. _____

In The

Supreme Court of the United States

Bartlett- Jay Hanford, Petitioner

v.

Mine Safety and Health Administration,

Respondent(s)

On Petition For Writ of Certiorari United States Court of Appeal for the Federal Circuit

---

PETITION FOR WRIT OF CERTIORARI

Petition respectfully prays that a Writ of Certiorari issue to review the Judgment below:

[X] For cases from federal courts:

OPINIONS BELOW

[X] FOR CASES FROM FEDERAL COURT

The opinions of the Court of Appeal for the Federal Circuit appears in this text. Not citable

The opinions of the United States Court of Federal Claims appears in this text. No indication whether published.

The opinion of the Court of Appeal for the District of Columbia appears in this text regarding Notice of Appeal put in U.S. mail before due date No indication whether published.

The opinion of the District Court for the District of Columbia appears in this text.

JURISDICTION

[X] The date on which the United States Court of Appeals for the Federal Circuit decided Petitioner's case was November 14, 2005.

[X[A timely petition for rehearing was denied by the United States Court of Appeal for the Federal Circuit January 18, 2006.

[X] No request for extensions were applied for by the petitioner. 60 days given for corrections.

[X] The jurisdiction of the Supreme Court is invoked under Title 28 U.S.C. Section 1254(1)

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

A) Separation of Powers of the Article I, Article II, Article III of the Federal Constitution; Article III Section III of the California State Constitution: The powers of state government are legislative, executive, and judicial. Person charged with the exercise of one power may not exercise either of the other, except as permitted by this Constitution.

B) Title 42 U.S.C. 1986 knowledge of a constitutional issue in the nature of two conclusions of law timely served upon the Secretary of Labor and key officials of Mine Safety and Health Administration including local field agents. The failure to resolve the issue of law between two constitutional conclusions of law and the movement forward against petitioner without resolving an issue of law was without authority, resulting in felonies committed in the name of the

Secretary of Labor by impersonating a judge and deprivation of rights under the color of law title 18 U.S.C. 242 where the penalty is spelled out. If you look into the file of Secretary of Labor you will find an issue of law unresolved, which Petitioner would like to have the Supreme Court resolve.

C) Expression essential to the ends that government be responsive to the will of the people so that change can come by peaceful means. It is paramount and mandatory that an administrative agency, the Mine Safety and Health Administration must be transparent and respond to non- related parties inquires to learn the nature and cause of their participation and respond to timely to presentation of affidavits and issues of law presented to above said agency. The non-response of said agency condoned by the lower courts deprived petitioner's right to petition under the first amendment of the united States Constitution and Rights under Administrative Procedure Act Title 5 U.S.C. 706. All unrebutted Affidavits stand as truth and judgment. A sworn unrebutted affidavit of truth stands true. . Mclovich Bidrs v City of San Bernardino, 160 CA, App Ct 3rd 981.)

D) The Right to Mine is an arcane right not known by many, but is a right of the people similarly enumerated in the Bill of Rights. As a right, The Right to Mine cannot be taken away as it was taken from Petitioner by the Mine Safety and Health Administration without due process of law under the fifth amendment of the united States Constitution. The right was vested by the driving of over 3000 feet of cross cuts and drifts and 600 feet of shafts and raises together with small shipments of ore over nine years,

E) Under the Provisions of Marshall v Waite 628 F 2nd 1255 (1980) for mines with no employees a Fourth Amendment warrant is a requirement for the Mine Safety and Health Administration to invade the privacy of Petitioner. Under the provisions of Byers v US 273 U.S. 28 (1928) for a federal agent to "piggy back" on State Search with State Official a Fourth Amendment Warrant is a requirement signed by a Federal Judge of Oath and Affirmation is a requirement for MSHA to Invade petitioner's Mine Property. MSHA had no warrant or injunction to participate in a purely state matter.

F. By neglect of due process of law petitioner was injured by the failure of the Mine Safety and Health Administration to resolve an issue of law between two constitutional conclusions of law, so without authority, making a legal determination, as to the rights of petitioner against petitioner's contrary conclusion of law. The physical invasion by the Mine Safety and Health Administration without the effectuation of a substantial federal purpose against petitioner in an organized enterprise with the sheriff to deprive petitioner of explosives, with knowledge through constructive notice of violations timely presented to MSHA, taking away all use of the patented mine property amounted to a takings without just compensation.

STATEMENT OF THE CASE

The Mine Safety and Health Administration (MSHA): Department of Labor had formed an organized enterprise with the local sheriff. While Petitioner had contracted with the Sheriff's Department to Inspect Petitioner's magazine, Petitioner did not contract with MSHA. MSHA had no probable cause to join the sheriff nor did I give them permission to join the Sheriff. The Sheriff knows MSHA destroys small mines and chose not to invite Cal OSHA, the state equivalent, which has the same capabilities because they cannot issue monetary fine. The Sheriff was going to do a surprise attack against, Petitioner, however his plans failed in his sinister scheme, by the death of the MSHA inspector from a heart attack. The cat was out of the bag due to the third cancellation when it was admitted by the deputy Sheriff that he was bringing MSHA whether Petitioner liked it or not. Knowing MSHA destroys small mines, through unlimited fines, from years of experience in the mining industry, I sought to protect my ten years of work, my livelihood, mining right and liberty right by serving the secretary of labor, and key officials and local officials of MSHA a controversy of law, bill of particulars, memorandum of law and Constructive

Notice of tumult that they were violating Appellant's constitutional rights. My conclusion of law is that MSHA is barred form regulation of my patented claim; I had the state and federal constitution, ie. the right to liberty, mining right and livelihood right; MSHA's contrary conclusion of law is that their power is absolute, they have jurisdiction over any tunnel, incline, shaft etc. anywhere in the several 50 states. Upon service of the above papers on the DoL and field agents of MSHA, the sheriff and MSHA was going to punish Petitioner and see that Petitioner would not get Petitioner's inspection and permit, making my simple explosive permit contingent upon inspection of the mine in an act of extortion. After retaining a lawyer, MSHA breeched the contract Petitioner had made with MSHA(for the resolution of two conclusions of law) and moved forward against Petitioner, without a fourth amendment warrant needed to accompany the sheriff under Byers v U.S. committing felonies as outlined in the memorandum of law they were served for failing to resolve the issue of law between two constitutional conclusions of law, involving the separation of powers. The charges: making a legal determination as a judge causing a deprivation of rights under the color of law for not resolving an issue of law squarely before the Department of Labor and MSHA and moving forward against plaintiff with knowledge and negligence of the

law under Title 42 U.S.C. 1986 that they were violating petitioner's constitutional rights which they had knowledge thru constructive notice. In the files of MSHA and the Secretary of Labor you will find the issue of Law un-resolved. The inspector general U.S. Department of Labor had knowledge of the events through copies made to agents. The inspector general fired the agent/mine inspector, who admitted he had no jurisdiction at the site because there were no mines at the magazine site and the sheriff could have inspected the magazine, which Petitioner had informed the sheriff he didn't need to bring MSHA. It was deemed a legal storage by the MSHA inspector and the sheriff concurred. The sheriff broke local state law by not issuing the permit within 14 days as required under H&S 12,105.1. I finally got my permit after being deprived of my liberty for 147 days in an act of false imprisonment or false arrest and felonies mentioned above. I severed MSHA several other papers in the form of affidavits, which were un-rebutted to determine the nature and cause of their actions and a Tort Claim with an engineers report. Having made 5 presentments for damages as a result of their un-ethical behavior and due process violations, under the policy of TACIT PROCURARION, I filed an administrative

judgment/ Summary Judgment against MSHA and recorded said judgment in county records, which became law in 30 days as a matter of public policy, and attached it to my petition case No. 01-00443 RCL in the district court for the district of Columbia for judicial review. Somehow, I feel the U.S. Attorney is the judge, after two years in court they have admitted nothing. Although through a private administrative process, through an affidavit of negative averment Ms. Zane dba. United States Attorney and Representative for MSHA through a negative affidavit became a stipulation agreement of the facts which I witnessed did not exist- therefore, there were no facts in controversy without a response by Defendant(s). The U.S. Attorney stipulated to facts which incriminates the Department of Labor in the case through a certificate notarial protest, a third party, an officer of the court witnessing due process violations of the U.S. Department of Labor and their agents; the un-rebutted affidavit of negative averment now stipulations in the case. The complaint to the United States Court of Federal Claims was written as a negative affidavit. Again Petitioner's negative affidavit became a stipulation agreement of the facts which I witnessed did not exist- therefore, there were no facts in controversy without a response by Defendant(s). Defendant(s), Respondents refused to rebut the negative affidavit and robotically filed a

motion to dismiss, admitting facts key for the judge to decide in favor of Petitioner, but Judge Hewitt refused to grant petitioner judgment when the facts of the case were set in stone fatal to MSHA's criminal behavior. Petitioner filed a summary judgment before Defendant(s) motion to dismiss and summary judgment was never heard because of prejudice of Judge Hewitt favoring the U.S Attorney, saying the summary judgment was moot because she granted the motion to dismiss for the defendant(s), even though it should have been heard before Respondents motion to dismiss. Further, Judge Hewitt opinion was not supported by the facts, evidence or affidavits, outrageously, tried to say MSHA was not involved. The appeal before the United States Court of Appeal for the Federal Circuit was a sham because it was non-responsive to key questions in Appellant reply brief specifically involving the authority of MSHA. Without Respondents authority to come against petitioner there was no effectuation of a substantial federal purpose and the physical invasion by MSHA by the unreasonable abuse of police power by depriving plaintiff of his explosives/a defacto ban of mining and livelihood rights caused a takings without just compensation. The Obstacle created by MSHA goes against the congressional intent of congress which permits and encourages mining. None of the lower courts would address the kernel core issue of the case

i.e. the authority for MSHA to move against petitioner and now ask the Supreme Court to define authority for MSHA to come against Petitioner. MSHA moved forward on their conclusion law rather than a legal determination or a valid court process. Petitioner filed for rehearing and filed a Writ of Mandate with a Writ of Precipe directed to the Clerk of Court of Appeal for the Federal Circuit to File said Writ of Mandate. As part of the Appeal the Appeals court failed to uphold Petitioner's fundamental right to Petition the Department of Labor and the Mine Safety and Health Administration, Petitioner's Right to Mine, Petitioner's vested property rights, Petitioners fourth amendment protected right and failed to give equal protection of the law. The clerk refused to File the Writ of Mandate, which was technically correct, directed to the Chief Judge, the clerk ignoring the Writ of Precipe. The Writ of Mandate ordered the three judge Panel to uphold fundamental rights that the Appeals Court should have upheld but did not. Petitioner filed with the Supreme Court under Rule 22 Justice Roberts, however, the correspondence was lost, according to the clerks. Will silence by the Department of Labor; MSHA be shield, the court ratifying due process violations of an un-accountable agency who answers to no-one for the torturous acts of its key officials and unbridled field agents? Or on the other had will silence be a sword, the

petitioner having satisfaction and accord on the contract by the agency agreement by their silence and thru their admissions in the public record found as part of the petition filed with the district court and now by stipulations of Attorney Zane in a private administrative proceeding, representing DoL and MSHA, the court taking notice of these documents and ruling in favor of plaintiff holding the above mentioned agency accountable for violations of secured liberties, mining right, livelihood and a takings without just compensation for an invasion of a long standing exploration mining venture, which had defined targets of investment backed expectation, the project irreversibly damaged by the participation of DoL/MSHA thru their torturous acts driving him from his mine property losing 20 % of his life and livelihood.

REASONS FOR GRANTING

THE PETITON

Separation of Powers

i. it is paramount and mandatory that the government be transparent. When I learned of the thwarted surprise attack by MSHA, I had the right to know the nature and cause of their involvement, having years of experience in the mining business, I could be fined out of existence and the nine years of work lost because the Mine Safety and Health Administration as a policy and custom of said agency destroys small mines. When given a bill of Particulars they had the duty to respond, but remained silent. When I served the Secretary of Labor, Undersecretaries and local field agents of MSHA an issue of Law, they had the Duty to resolve the issue before moving against Petitioner. With the service of process was a memorandum of law, which informed the secretary of labor, giving her Title 42 U.S.C 1986 knowledge of felonies that would be committed in her name, if said agency proceeded against Petitioner. MSHA ignored the Petition/Affidavits committing crimes where the penalty is spelled out in Title 18 U.S.C 242 in the attached memorandum of law. Without resolution of the issue of law: whether my right to mine depended

on the permission of MSHA for its existence or my conclusion of law: that I had the state and federal constitution and my right to mine was unassailable and unrebuttable because the mining was on a patented mining claim where the rights go back to the date of location. That Petitioner was mining for the highest and best use Congress intended. Laws which prohibit the Lawful use of the sovereign property, which the supreme sovereign permits and encourages is violative of the Supremacy Clause Article VI Section II. SD Mining Assoc. v Jack Cole, nhttp://laws. Find law. co/8th/973861p.html By MSHA failing to resolve the issue of law they clearly had knowledge, making a legal determination, acting judicially being clothed as an executive agency in an organized enterprise with the sheriff, making the annual explosive permit contingent upon inspection of the mine as an act of EXTORTION, MSHA was clearly without AUTHORITY or fourth amendment warrant. Further in violation of the SEPARATION OF POWERS. The lower courts upheld the scheme of MSHA failure to be responsive, allowing the silence to defeat petitioner and condoned the due process violations of MSHA, which not only was in violation of the

SEPARTATION OF POWERS but clearly violated my right to petition under the First Amendment of the united States Constitution. While the Court of Appeal for the Federal Circuit said Petitioner(s) case is not citable as precedent, by their decision have caused irreparable harm to to the people of the united States ie. any one unfortunate enough to have to deal with corrupt-sinister, MSHA, The Court of Appeal for the Federal Circuit has hurt the people, making a blue print for MSHA to defeat all future comers who might have a dispute with MSHA. MSHA can ignore all valid challenges and remain unaccountable short of murder, and just remain silent and that corrupted scheme will be upheld by the lower courts as a valid exercise of absolute police power. People can be ruined and a large portion of their lives work rendered nullity and the Court of Appeal for the Federal Circuit will uphold the due process injustice. There must be no Judicial Branch or Article III court exercising judicial function, because if the paperwork in Exhibit A, timely served upon MSHA, isn't a large enough issue for the court to decide involving the

separation of powers; the nuts and bolts of the constitution; the frame work and corner stone of the republic, then Petitioner has been deceived that there is a judicial branch of government. The Court of Appeal for the Federal Circuit having the power/jurisdiction to decide and refusal to do so, have denied petitioner his first amendment right to Petition and be heard and Equal protection of the law: rights inviolate! The taking of Petitioner's Mining right is equally a crime without a notice, discovery and hearing. MSHA had no authority, there was no reason for the Magazine to Meet Federal Standards because Appellant was an intrastate user of explosives. It was a fraud FRCP rule 9(b) for the Court Of Claims in the opinion to use it as a ruse to justify MSHA's action. MSHA's jurisdiction is in Washington D.C. and enclaves and territories Title 4 USC 72. Not the Several states. The rights to the Patented claim go back to the date of location. Congress refused to accept liability on Patented Claims and didn't withhold a reservation for health and safety. MSHA is barred from regulation of Appellant's patented claim; covenants encumbrances and restriction not within the reservations are barred. Reservations cannot be added on or taken off. The rights on patented claims are preserved 43 CFR 3714.3. Appellant had no UCC- 3-501 contract with MSHA. No

mine ID number. There was No compelling Federal Interest, no exigent circumstances, No threat to the publics Health, Safety, Morals and welfare for MSHA to be involved. MSHA's extortion plot in the organized enterprise with the Sheriff contributed to the suspension of Appellant's inherent rights. There was no effectuation of a substantial federal purpose, yet participation by MSHA without a valid court process that through violation of the First, the Forth, due process clause of the Fifth of the united States Constitution, the supremacy clause, a sixth amendment and 14th amendment claim has caused a permanent taking without just compensation also in violation of the fifth amendment of the United States Constitution. For MSHA to engage in an organized enterprise to withhold explosives for 147 days for a job that took twenty minutes is an unreasonable abuse of police power.

" The legislative effort at regulation, within the police power, is not subject to condemnation strictly speaking, because it is unreasonable but because it impairs or destroys some inherent right, instead of preserving it. With respect to inherent rights, all which conserves is reasonable, that which impairs or destroys is unreasonable" Mehols v Milwaukee 156 Wis 591

2. Unless the decision of the lower courts is reversed the People have no right to petition their government because I have been denied the right to Petitioner under the First Amendment of the united States Constitution. There is no further need for The Judicial Branch of Government because the Police Power of the Executive Branch of government has been decided absolute by the lower courts. The Bill of Rights suspended.

Right to Mine

2. As a gold miner Petitioner has the right to mine. U.S v Etcheverrey 230 2nd At 193. In the Pennsylvania Coal Co. v Mahon. The Court observed that "[f]or practical purposes, the right to coal consists in the Right To Mine," and that the statute, by making it "commercially impracticable to mine certain coal," had essentially "the same effect for constitutional purposes as appropriating or destroying it. 260 U.S. 414. Like in Mahon to deny me the right to explosives, with no compelling federal Interest or eminent danger in absence of criminal activity for 147 days for a job that took 20 minutes is totally unreasonable. During the many years petitioner worked his mine, without

employees, choosing to remain small until sufficient ore could be developed that could withstand the regulation of MSHA where employees could possibly be hired. Petitioner had completed over 3000 feet of drifts and crosscut tunnels as well as 600 feet of shaft and raises and shipped small amounts of ore to the smelter. For MSHA to tie me up, usurp jurisdiction and deny the right to mine for any length of time for constitutional purposes acting judicially as an executive agency to deprive Petitioner of explosives for which there was a clear legal right and vested upon continual and approved use on a patented claim for the highest and best us congress intended was the will of intent to destroy the mineral content within the patented claim boundaries of petitioner's exploration operation causing a takings without just compensation. The action by MSHA was outrageous and actions by MSHA amounted to a Physical Invasion/occupation/obstacle that constituted an essentially de facto ban of Appellants mining right because he was deprived of explosives to continue his operation without due process of law for the highest and best use which Congress intended, which congress permits and encourages. MSHA, the Secretary of Labor had full knowledge of a tumult by service of process prior the invasion. As a Right. Petitioner's

mining right could not be taken away for any amount of time without due process of law.

Fourth Amendment

3. The agent of MSHA being a federal agent for the Mine Inspector to Accompany a State official of a State Search a fourth amendment Warrant from the Federal Court was a requirement for the Federal Official to Accompany the state official according to Byers v US. 273 U.S. 28 (1927) Since Petitioner was an exploration with no employees according to Marshall v Waite 628 F. 2nd 1255 (1980) a fourth amendment Warrant was also a requirement for MSHA to participate in the invasion of petitioner's patented mining claim.

Takings

4. The lower courts never dwelled into where MSHA ever got authority to join the sheriff in an organized enterprise with the sheriff that denied me fundamental liberties because petitioner was an intrastate user of explosives. The memorandum of understanding between MSHA and the ATF did not apply because

petitioner was not a licensee or permittee of ATF. The U.S. Department of Justice said there was no Federal Jurisdiction on the property. Without a substantial federal purpose, MSHA's participation which caused a defacto ban on mining because of lack of explosives by their physical invasion caused a takings. First English held that a taking occurs when the government deprives an owner the use of his property, even temporarily. See 482 U.S. at 318 (" '[T]emporay takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings, for which the Constitution clearly requires compensation." The first encompasses regulations that compel the property owner to suffer a physical "invasion" of his property. In general (at least with regard to permanent invasions), no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation. For example, in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), we determined that New York's law requiring landlords to allow television cable companies to emplace cable facilities in their

apartment buildings constituted a taking, id., at 435-440, even though the facilities occupied, at most, only 1 1/2 cubic feet of the landlords' property. The action by MSHA caused a permanent loss of 10 years of work and the mine property.

Writ of Praecipe

5. After the Court of Appeal of the Federal Circuit Affirmed the decision of the United States Court of Federal Claims Petitioner felt cheated by the court decision because the court knew that MSHA violated Petitoner's fundamental liberties. Since the Court would not uphold the rights of petitioner Mandate was appropriate to enforce rights unalienable and filed a petition as a new action as a Writ of Mandate in the court of appeal for the Federal Circuit directed at the Chief Judge to order his staff to uphold the rights petitioner. The clerk refused to file the petition even though petitioner praeciped the clerk to file the Writ of Mandate. The clerk denied petitioner access to the court because a praecipe is a command from the sovereign to do her ministerial duty to file the

petition for Writ of Mandate, However shrunk from her duty to perform the duty of the clerk.

Explosives, a tool of the miner

6. This case was before September 11, 2001. Based on the decision to the lower courts regarding petitioner's case of total rejection of the separation of powers doctrine because petitioner needs explosives in my work does not suspend my right to mine, my right to petition, my livelihood right, my property right, my fourth amendment right and can't deny me equal protection of the law, contrary what the three judge panel thinks in the court of Appeal for the Federal Circuit who routinely review cases involving administrative agencies and know, if said agency actions violate fundamental liberties of claimants. The three judge panel having knowledge of petitioners memorandum of law as follows of felonies committed in the name of the Secretary of Labor: Any who take upon them to make a legal determination on this issue of law, so that they may press forward on a fact issue in a legislative tribunal, would be proceeding under color of law on fact issues which may establish a legislative jurisdiction over the Accused,

which does not presently exist yet, to secure the agency/ forum/ tribunal/court's existence would be an action under pretended law or color of law to deprive the Accused citizen of rights protected by the Constitution of the United States, a clear violation of Title 18, U.S.C. Section 242, where the penalty is spelled out. If there was such an act done under color of law, that act would be a second felony resulting for the first felony; the first felony being where the legislature or executive agency or person has impersonated a judge at law which offense is against the United States and the separation of powers doctrine, the very foundation- stone of the republic. The courts willful failure to ignore the above a favor authority over the rights of the individual is reversible error. *This court has been zealous to protect these [confrontation] rights from erosion.* It has spoken OUT NOT ONLY IN CRIMINAL CASES, e.g. Mattox v United States, 156 U.S. 237, 242-244; Kirby v United States 174 U.S. 47; Motes v United States, 178 U.S. 458, 474; in re Oliver 333 U.S. 257, 273, <u>but also in ALL TYPES OF CASES where administrative and regulatory action were under scrutiny</u>, e.g. Southern R. Co. v. Virginia, 290 U.S. 190; Ohio Bell Telephone Co. v Public Utilities Commission, 301 U.S. 292; Morgan v United States, 304 U.S. 1, 19; Carter v Kubler, 320 U.S.

243; Reilly v Pinkus, 338 U.S. 269.' Green v McElroy, 360 U.S. 474, 496-497 (1959) (emphasis mine). If the Judges don't enforce fundamental rights. Then there are none for petitioner or the people of united States.

CONCLUSION

The separation of powers argument is a valid principle of law, which the petitioner can serve upon the secretary of labor and be on an equal footing with MSHA and the Department of Labor regardless of the disabilities of the lower court judges, who have ignored the frame work of the constitution. Like Robert Bork writes: " There is a Constitution with a historical meaning and anyone may use that meaning for his defense no matter how many elections have gone against him." Like ATF, The Mine Safety and Health Administration should have declined to participate in an evil scheme with the Sheriff to cause Petitioner irreversible Harm by making a simple explosive permit, which petitioner had been getting annually and had a clear legal right for said permit, contingent upon inspection of the mine in an act of

extortion, MSHA then could either resolve the issue of law presented to the Secretary of Labor and undersecretaries in an Article III court exercising judicial function or obtain a fourth amendment warrant or a valid court process before coming against Petitioner. MSHA represented an unreasonable abuse of police power, they applied willfully with knowledge thru constructive notice and memorandum of law timely served prior to their invasion, a violation of vested property, livelihood, mining and liberty right to cause Petitioner to be without explosives for 147 days/ a defacto ban of mining/Obstacle in violation of the Supremacy Clause because it goes against the congressional intent of congress, taking all use of the patented claim for a job that took twenty minutes in defiance of the Congressional Intent which permits and encourages mining. By MSHA's action and violations of due process of law by remaining silent when there was an obligation to speak, the findings in the lower Courts should be reversed to discourage the agencies unlawful behavior with regard to other people who might be unfortunate enough to deal

with MSHA. The court should take notice that some of the inspectors have been murdered. Government must be transparent. The threat posed by the accumulation of power in one branch of government, an evil well known to the founders, is a guiding principle behind the constitution. In support of ratification, Alexander Hamilton quoted from Montesqieu: "there is no liberty, if the power of judging be not separated from legislative and executive powers." The Federalist No. 78. That the court had the duty to study the administrative process which preceded the court case and had the duty recognize the failed legal duty and obligation of MSHA to be responsive to Plaintiff, which cannot be equated with good faith and fairness. The punishment for MSHA's violation of Plaintiff's administrative inquiries for being non-responsive is to strike the Respondents pleadings. That Respondents motion to dismiss in the Court of Federal Claims is moot for the non-responsiveness in the administrative process. Respondents denial of the administrative Process violates petitioenr's right to petition under the first amendment. The above was the contract which was to be reviewed in the Court of Claims as the first

amended complaint, which petitioner had full satisfaction and accord on the contract by MSHA's silence through the legal theory of Tacit Procuration. MSHA jurisdiction is Title 4 USC 72, not the several states and had no right to regulate plaintiff 's patented claim; pre-established rights and rights going back to date of location. It was the will of intent to destroy plaintiff's mine making a simple explosive permit contingent upon inspection of the mine by MSHA and the Sheriff in the act of extortion Cal Penal Code 519. Cal OSHA the California equivalent was not consulted because they have no power to fine Petitioner. That MSHA was served constructive notice they were violating my rights and ignored an issue of law in the file of said agency that remains unresolved, which MSHA had knowledge of the consequences, if they moved forward against Petitioner by a memorandum of law. MSHA acted judicially when clothed as an executive agency in violation of the separation of powers because only an Article III Court exercising judicial function can make a legal determination upon two constitutional conclusions of law. That MSHA is a corrupt, sinister racketeering influenced crime organization which as a policy and custom destroys small mines. That MSHA had no right to conspire with the sheriff to deny Plaintiff's mining right without first giving notice, discovery, and hearing. Plaintiff's rights were vested and had been receiving permits annually for nine years prior to the physical

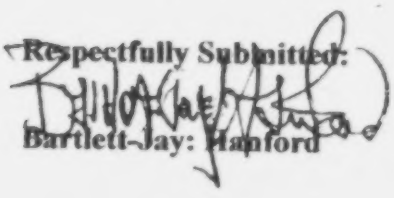
invasion. When MSHA showed up at the magazine it cemented Plaintiff's case against MSHA after being informed by a memorandum of law nearly two months earlier. Without a clear showing of a compelling federal interest, eminent danger, exigent circumstances, threat to the publics health safety morals and welfare, MSHA's participation in the conspiracy to deny me my mining right and fundamental liberties constitutes an *unreasonable* interference under the guise of an exercise of the police power. Petitioner had no contract with MSHA to inspect Plaintiff's magazine or mine; Petitioner had no mine MSHA ID number; Petitioiner gave no permission for MSHA to inspect the mine. The memorandum of understanding between MSHA and ATF giving MSHA authority didn't apply to Petitioner and by the Department of Justice Land and environment own writings; "there was no federal Jurisdiction on the subject property." The only contract is the showing of dishonor and violation of fundamental liberties; mining right by MSHA ; the administrative process, the contract for adjudication in the first amended complaint before the Court of Claims and The Court of Appeal for the Federal Circuit. The Plaintiff having full satisfaction and accord on the contract or

judgment in estoppel, the Respondents not wishing to litigate further and in agreement on the terms of contract by their silence through Tacit Procuration for participation with the Sheriff in an organized enterprise to deny Plaintiff explosives (tools) necessary for the operation of his project. Having worked in mining/heavy construction for over 39 years, knowing MSHA destroys small mines through impossible regulation and inspectors derived from the bottom of barrel of mine industrial labor pool. MSHA has literally inspected them selves out of business and have been reduced to gravel pit inspectors driving the mining industry to foreign countries to escape their wrath leaving no underground mines to inspect. For, the very idea that man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." Yick Wo v Hopkins 118 U.S. 356, 370.

The Writ of Certiorari Should be granted.

Dated: May 20, 2006

Respectfully Submitted:



Bartlett-Jay: Hanford